

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 29, 2019

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COMMONWEALTH OF VIRGINIA

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At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUR-2019-00047

Ex Parte: In the matter of Motion of
Old Dominion Electric Cooperative and
its member distribution cooperatives for
the Commission to join in a FERC petition
for waiver of PURPA regulations

ORDER FOR NOTICE AND COMMENT

On April 5, 2019, Old Dominion Electric Cooperative ("ODEC") and its member distribution cooperatives in the Commonwealth of Virginia¹ (collectively, with ODEC, the "Co-ops") filed with the Virginia State Corporation Commission ("Commission") their *Motion Requesting the State Corporation Commission to Join Old Dominion Electric Cooperative and its Member Cooperatives in a Petition to the Federal Energy Regulatory Commission* ("Motion"). Through their Motion, the Co-ops seek for the Commission to join in their Federal Energy Regulatory Commission ("FERC") petition for partial waiver of certain obligations in FERC's rules implementing Section 210 of the federal Public Utility Regulatory Policies Act of 1978 ("PURPA").² In the alternative, the Co-ops move the Commission to authorize ODEC to

¹ A&N Electric Cooperative, BARC Electric Cooperative, Community Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative.

² 16 U.S.C. 824a-3. In addition to the Virginia member distribution cooperatives, Choptank Electric Cooperative, Inc., and Delaware Electric Cooperative, Inc., would join in the FERC petition. See Motion at 3.

represent in their FERC petition that the Commission endorses the FERC petition on behalf of the Co-ops.³

Under PURPA, both ODEC, which supplies power to its member distribution cooperatives but does not serve retail customers, and the member distribution cooperatives, which serve retail customers but own little or no electric generation sources, are each obligated to sell to and buy power from certain types of non-utility generation, known as qualifying facilities ("QFs").⁴ The Co-ops intend to seek a waiver from FERC such that ODEC would be relieved of its obligation to make future sales to QFs, and the member distribution cooperatives would be relieved of their obligations to buy power from QFs in the future.⁵ ODEC would assume the obligation to buy all QF power otherwise offered to its member distribution cooperatives, and the member distribution cooperatives would assume the obligation to make retail sales of electricity to QFs.⁶ The Co-ops propose an Implementation Plan, included as Appendix B to the Motion, which details the respective revised responsibilities of ODEC and its member distribution cooperatives and is intended to advise the public of the basic approach and general guidelines for QFs to: (i) interconnect with the electric utility systems of ODEC and its member distribution cooperatives; (ii) sell energy and capacity to ODEC; and (iii) purchase retail electric service from the member distribution cooperatives.⁷ According to the Motion, the

³ Motion at 20. The Co-ops represent that should the Commission choose to simply endorse their FERC petition, FERC would have to grant an ODEC waiver request to allow the Commission's endorsement of the FERC petition to take the place of the Commission filing or joining in the FERC petition. *Id.* at 20, fn. 50.

⁴ Motion at 2-3.

⁵ *Id.* at 3.

⁶ *Id.*

⁷ *See id.* at 4, Appendix B.

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their own behalf.¹⁴ After proper notice, only a state regulatory authority may apply for waiver of the PURPA regulations on behalf of its regulated electric utilities, or a nonregulated electric utility may apply for such waiver on its own behalf.¹⁵ Specifically, the PURPA waiver provision, 18 C.F.R. § 292.402 (2018), states:

Any State regulatory authority (with respect to any electric utility over which it has ratemaking authority) or nonregulated electric utility may, after public notice in the area served by the electric utility, apply for a waiver from the application of any of the requirements of subpart C[.]

The Commission regulates the rates of the member distribution cooperatives operating within the Commonwealth of Virginia and is thus permitted as a "state regulatory authority" to petition FERC for such waiver.¹⁶ The Co-ops desire the Commission to become a co-petitioner to FERC or, in the alternative, the Commission to authorize ODEC to represent in the FERC petition that the Commission endorses the FERC petition on behalf of the Co-ops.¹⁷ The Co-ops recognize that they could request a waiver from FERC of the requirement that the Commission file the FERC petition, although the Co-ops assert there is no precedent for such a waiver request.¹⁸

NOW THE COMMISSION, upon consideration of this matter and the relevant statutes and regulations, is of the opinion and finds that this matter should be docketed; the Co-ops should give notice of their Motion to interested persons; and interested persons should have an

¹⁴ *Id.* at 5-6.

¹⁵ *Id.*

¹⁶ *Id.* at 6-7.

¹⁷ *Id.* at 20.

¹⁸ *Id.* at 6.

opportunity to file comments on the Co-ops' Motion. We also find that the Staff of the Commission ("Staff") shall analyze the Co-ops' Motion and present its findings in a Staff Report.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUR-2019-00047.

(2) Copies of the Motion and the Commission's Order for Notice and Comment may be obtained by submitting a written request to counsel for the Co-ops, Garland S. Carr, Esquire, LeClair Ryan, 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060. If acceptable to the requesting party, the Co-ops may provide the documents by electronic means. Copies of these documents also shall be available for interested persons to review in the Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5 p.m., Monday through Friday, excluding holidays. Interested persons also may download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.

(3) On or before June 25, 2019, the Co-ops shall cause to be published, in Cooperative Living magazine, in each of the respective service areas of the member distribution cooperatives identified in footnote 1, notice of this proceeding and of the substance of the waiver sought by the Co-ops from FERC with regard to their obligations to sell electricity to and buy electricity from QFs. Specifically, the Co-ops shall cause to be published the following notice:

NOTICE OF MOTION BY OLD DOMINION
ELECTRIC COOPERATIVE AND
ITS MEMBER DISTRIBUTION COOPERATIVES FOR
THE COMMISSION TO JOIN IN A FERC PETITION
FOR WAIVER OF PURPA REGULATIONS

On April 5, 2019, Old Dominion Electric Cooperative ("ODEC") and its member distribution cooperatives in the Commonwealth of Virginia (collectively, with ODEC, the "Co-ops") filed with the Virginia State Corporation Commission ("Commission") their *Motion Requesting the State Corporation Commission to Join Old Dominion Electric Cooperative and its Member Cooperatives in a Petition to the Federal Energy Regulatory Commission* ("Motion"). Through their Motion, the Co-ops seek for the Commission to join in their Federal Energy Regulatory Commission ("FERC") petition for partial waiver of certain obligations in FERC's rules implementing Section 210 of the federal Public Utility Regulatory Policies Act of 1978 ("PURPA"). In the alternative, the Co-ops move the Commission to authorize ODEC to represent in their FERC petition that the Commission endorses the FERC petition on behalf of the Co-ops.

Under PURPA, both ODEC, which supplies power to its member distribution cooperatives but does not serve retail customers, and the member distribution cooperatives, which serve retail customers but own little or no electric generation sources, are each obligated to sell to and buy power from certain types of non-utility generation, known as qualifying facilities ("QFs"). The Co-ops intend to seek a waiver from FERC such that ODEC would be relieved of its obligation to make future sales to QFs, and the member distribution cooperatives would be relieved of their obligations to buy power from QFs in the future. ODEC would assume the obligation to buy all QF power otherwise offered to its member distribution cooperatives, and the member distribution cooperatives would assume the obligation to make retail sales of electricity to QFs. The Co-ops propose an Implementation Plan, included as Appendix B to the Motion, which details the respective revised responsibilities of ODEC and its member distribution cooperatives and is intended to advise the public of the basic approach and general guidelines for QFs to: (i) interconnect with the electric utility systems of ODEC and its member distribution cooperatives; (ii) sell energy and capacity to ODEC; and (iii) purchase retail electric service from the member distribution cooperatives. According to the Motion, the Co-ops' proposed Implementation Plan is intended to be prospective only: all current contracts for the sale or purchase of QF power would remain intact under the terms of the contemplated FERC petition and proposed Implementation Plan.

Federal regulations enacted by FERC implemented the buy/sell obligations for electric utilities operating in the United States under PURPA ("PURPA regulations"). The buy/sell requirements of the PURPA regulations were originally designed with integrated electric utilities, *i.e.*, those owning generation, transmission, and distribution facilities, in mind. Many of the nation's rural electric cooperatives, however, are not vertically integrated. Rather, ODEC (the generation and transmission cooperative) and its member distribution cooperatives function *together* as a vertically-integrated electric utility. The Co-ops represent that as a result, the PURPA regulations create costly and time-consuming inefficiencies for both ODEC and its member distribution cooperatives. According to the Co-ops' Motion, FERC has granted numerous petitions over the years similar to the one contemplated by the Co-ops, with the electric distribution cooperatives and their separately organized cooperative generation supplier waiving the must buy and must sell obligations in the manner contemplated by the Co-ops.

However, the Co-ops represent in their Motion that PURPA regulations provide no avenue for the Co-ops, as state regulated electric utilities, to file a FERC petition for waiver on their own behalf. After proper notice, only a state regulatory authority may apply for waiver of the PURPA regulations on behalf of its regulated electric utilities, or a nonregulated electric utility may apply for such waiver on its own behalf. Specifically, the PURPA waiver provision, 18 C.F.R. § 292.402 (2018), states:

Any State regulatory authority (with respect to any electric utility over which it has ratemaking authority) or nonregulated electric utility may, after public notice in the area served by the electric utility, apply for a waiver from the application of any of the requirements of subpart C[.]

The Commission regulates the rates of the member distribution cooperatives operating within the Commonwealth of Virginia and is thus permitted as a "state regulatory authority" to petition FERC for such waiver. The Co-ops desire the Commission to become a co-petitioner to FERC or, in the alternative, the Commission to authorize ODEC to represent in the FERC petition that the Commission endorses the FERC petition on behalf of the Co-ops. The Co-ops recognize that they could request a waiver from FERC of the requirement that the Commission file the FERC petition, although the Co-ops assert there is no precedent for such a waiver request.

The Commission entered an Order for Notice and Comment in this proceeding that, among other things, directed the Co-ops to provide notice of their Motion and provided interested persons an opportunity to comment on the Motion.

Copies of the Motion and the Commission's Order for Notice and Comment may be obtained by submitting a written request to counsel for the Co-ops, Garland S. Carr, Esquire, LeClair Ryan, 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060. If acceptable to the requesting party, the Co-ops may provide the documents by electronic means. Copies of these documents also shall be available for interested persons to review in the Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5 p.m., Monday through Friday, excluding holidays. Interested persons also may download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.

On or before July 16, 2019, any interested person may file with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, written comments on the Motion. On or before July 16, 2019, any interested person desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. PUR-2019-00047.

All documents filed with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice and Procedure.

The Commission's Rules of Practice and Procedure may be viewed at <http://www.scc.virginia.gov/case>. A printed copy of the Commission's Rules of Practice and Procedure and an official copy of the Commission's Order for Notice and Comment may be obtained from the Clerk of the Commission at the address above.

ODEC AND ITS MEMBER DISTRIBUTION COOPERATIVES

(4) On or before July 16, 2019, the Co-ops shall file proof of service as ordered herein with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center,

P.O. Box 2118, Richmond, Virginia 23218-2118, including the name, title, and address of each official served.

(5) On or before July 16, 2019, any interested person may file written comments on the Motion with the Clerk of the Commission at the address set forth in Ordering Paragraph (4).

Any interested person desiring to submit comments electronically may do so on or before July 16, 2019, by following the instructions found on the Commission's website:

<http://www.scc.virginia.gov/case>. Compact disks or any other form of electronic storage medium may not be filed with the comments. All comments shall refer to Case No.

PUR-2019-00047.

(6) On or before July 16, 2019, the Staff shall analyze the Motion and present its findings in a Staff Report.

(7) On or before July 23, 2019, the Co-ops may file with the Clerk of the Commission any response to comments filed with the Commission. If not filed electronically, an original and fifteen (15) copies of the response may be submitted to the Clerk of the Commission at the address set forth in Ordering Paragraph (4).

(8) All documents filed in the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and Format*, of the Commission's Rules of Practice and Procedure.¹⁹

(9) This matter is continued.

AN ATTESTED COPY HEREOF shall be sent by the Clerk of the Commission to:
James P. Guy, Esquire, and Garland Carr, Esquire, LeClairRyan, 4201 Dominion Boulevard,

¹⁹ 5 VAC 5-20-10 *et seq.*

Suite 200, Glen Allen, Virginia 23060; and C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219. A copy shall also be delivered to the Commission's Office of General Counsel and Division of Public Utility Regulation.

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